

+IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

TIMSTER’S WORLD FOUNDATION,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD79053

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 26, 2016

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Special Division: Mark D. Pfeiffer, C.J., and Gary D. Witt and Anthony
Rex Gabbert, JJ.

ATTORNEYS

Philip A. Klawuhn
Kansas City, MO

Attorney for Appellant,

Andrew C. Hooper
Jefferson City, MO

Attorney for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

The second step is to determine whether the workers were independent contractors of the Foundation rather than employees. The IRS has identified twenty factors as guides for determining whether sufficient control is present to establish an employer-employee relationship. In our examination of the factors challenged by the Foundation in light of the Commission's factual findings, eleven factors favor employee status, while nine favor independent contractor status. Although this is a close call, because the workers received remuneration from the Foundation, it is presumed that the relationship between the workers and the Foundation is one of employee-employer; and the Foundation bears the burden of proof to demonstrate that, instead, the relationship is that of independent contractor. The majority and most important control indicia show that the Foundation retained the right to control the manner in which the workers performed their duties, and the Foundation did not meet its burden of proving that the workers were independent contractors.

There is sufficient competent and substantial evidence in the record to support the Commission's determination that the Foundation's workers performed services for wages in employment and, thus, were not independent contractors.

Opinion by: Mark D. Pfeiffer, Judge

July 26, 2016

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.